

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

AGL Resources Inc., Nicor Inc., and	:	
Northern Illinois Gas Company d/b/a	:	
Nicor Gas Company	:	
	:	Docket No. 11-0046
Application for Approval of a Reorganization	:	
Pursuant to Section 7-204 of the Illinois	:	
Public Utilities Act.	:	

**JOINT APPLICANTS' DRAFT ORDER**

Dated: August 18, 2011

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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By the Commission:

**I. PROCEDURAL HISTORY**

In an application filed January 18, 2011, AGL Resources Inc. ("AGL"), Nicor Inc. ("NI") and Northern Illinois Gas Company d/b/a Nicor Gas Company ("NG") (collectively "JA") asked the Illinois Commerce Commission ("Commission"), for approval, pursuant to Sections 7-204 and 7-204A of the Public Utilities Act (the "Act")<sup>1</sup>, of a "reorganization" by which NI will merge with and into a subsidiary of AGL and NG will become a wholly-owned subsidiary of AGL (the "Reorganization"). JA also sought approval pursuant to Sections 7-102<sup>2</sup> and 7-204A(b) of the Act for entry by NG into an affiliated interest agreement by which it would receive shared corporate and other services from AGL's subsidiary AGL Services Company ("AGSC"). JA requested other approvals and findings in connection with the Reorganization, as more fully discussed in this Order.

With their Application and in support thereof, JA filed materials and information required by Section 7-204A and the prepared direct testimony and exhibits of the following six witnesses: Henry Linginfelter, Executive Vice President, Utility Operations for AGL; Rocco D'Alessandro, Executive Vice President of Operations for NG; Stephen Cave, Vice President – Finance and Treasurer for AGL; Anthony McCain, NG's Vice President, Field Operations; Elizabeth Reese, Vice President, Operational Planning and Analysis for AGL; and Gerald O'Connor, Senior Vice President for Finance and Strategic Planning for NG.

Petitions to intervene were filed by: the Citizens Utility Board ("CUB"); the People of the State of Illinois by the Office of the Attorney General ("AG"); the Retail Energy Supply Association ("RESA"); Interstate Gas Supply of Illinois, Inc. ("IGS"); The Manchester Group, LLC ("Manchester"); the Environmental Law and Policy Center

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<sup>1</sup> 220 ILCS 5/7-204 and 7-204A.

<sup>2</sup> 220 ILCS 5/7-102.

("ELPC"); and Local Unions 19, 117, 134, 150, 176, 364, 461 and 701, International Brotherhood of Electrical Workers, AFL-CIO (collectively the "Unions"). All of these petitions to intervene were granted by the Administrative Law Judge ("ALJ").

Pursuant to due notice as required by law and by the rules and regulations of the Commission, prehearing conferences were held in this matter before a duly-authorized ALJ of the Commission at its offices in Chicago on February 8, April 4 and 6, June 29 and July 14, 2011.

On March 24, 2011, JA filed a Request for Administrative Notice asking that the ALJ take administrative notice of NG's request for leave to file a Stipulation in ICC Docket No. 09-0301 in further support of its motion to suspend that proceeding. ICC Docket No. 09-0301 was commenced pursuant to the Commission's Order in NG's last rate case for purposes of reviewing and approving the Operating Agreement ("OA") applied to NG's transactions with affiliates:

IT IS FURTHER ORDERED that Nicor shall file a petition within 120 days of the date of a final Order in this proceeding seeking either re-approval of its current Operating Agreement, or, approval of a new affiliated interest transaction agreement; this petition shall address the criteria expressed by Staff, as is set forth in Section XIV(C) herein; and, it shall be supported by verified testimony.<sup>3</sup>

The Stipulation in ICC Docket No. 09-0301 sets forth an agreement reached among NG, Staff, the AG, CUB, and RESA regarding the use in this docket of data request responses served and testimony filed in ICC Docket No. 09-0301. On April 6, 2011, the ALJ took administrative notice of NG's filing in further support of its motion to suspend the proceeding in ICC Docket No. 09-0301 and granted JA's request to allow the parties in this docket to use testimony filed in ICC Docket No. 09-0301.<sup>4</sup> Also on April 6, 2011, the ALJ ordered a separate schedule for filing testimony, an evidentiary hearing and briefing to address OA issues in this docket.

In accordance with the ALJ's rulings, NG, Staff, AG/CUB, IGS/RESA and Manchester re-filed in this docket on April 15, 2011 the following testimony previously filed in ICC Docket No. 09-0301: direct and rebuttal testimony of NG witness Gerald P. O'Connor, Senior Vice President for Finance and Strategic Planning for NG; rebuttal testimony of NG witness Agustin J. Ros, Vice President, NERA Economic Consulting; rebuttal testimony of NG witness John Erickson, Vice President, American Public Gas Association; direct and rebuttal testimony of Staff witness Dianna Hathhorn, Accountant, Accounting Department, Financial Analysis Division; direct, rebuttal and supplemental rebuttal testimony of Staff witness David A. Sackett, Economic Analyst, Policy Program, Energy Division; direct and rebuttal testimony of AG/CUB witness David J. Effron,

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<sup>3</sup> In re Nicor Gas (proposed general increase in rates), Dckt. 08-0363, Order, Mar. 25, 2009, at 185.

<sup>4</sup> Tr. 153.

consultant; rebuttal testimony of IGS/RESA witness Teresa L. Ringenbach, Manager, Government and Regulatory Affairs for the Midwest, Direct Energy, LLC; and rebuttal testimony of Manchester witness William Thomas, President and Founder of Manchester. On April 22, 2011, NG filed the surrebuttal testimony of Mr. O'Connor, Mr. Ros and Mr. Erickson relating to OA issues.

On April 28, 2011, Staff, AG/CUB and IGS/RESA filed direct testimony. The following witnesses presented direct testimony on behalf of the Staff of the Commission: Harold Stoller, Director, Energy Division; Richard W. Bridal II, Accountant, Accounting Department, Financial Analysis Division; Dianna Hathhorn, Accountant, Accounting Department, Financial Analysis Division; Rochelle Phipps, Senior Financial Analyst, Finance Department, Financial Analysis Division; David Rearden, Senior Economist, Policy Program, Energy Division; Mark Maple, Senior Gas Engineer, Engineering Department, Energy Division; and Darin Burk, Manager, Pipeline Safety Program, Energy Division.

David J. Efron, consultant, presented direct testimony on behalf of AG/CUB.

The following witnesses presented direct testimony on behalf of IGS/RESA: Vincent Parisi, General Counsel, IGS, and Jason R. Kawczynski, Associate of Volume Management, Constellation NewEnergy – Gas Division, LLC.

On May 19, 2011, JA filed a Stipulation they entered into with RESA and IGS.<sup>5</sup> Attached to the Stipulation was a Settlement Agreement that resolved “all issues between the Joint Applicants, RESA and IGS presently pending in this proceeding, Docket No. 11-0046, as well as the issues brought into this proceeding from Docket No. 09-0301.”<sup>6</sup> As a result of that Stipulation, RESA, IGS and Manchester withdrew all their testimony in this docket.

On May 20, 2011, JA and Staff filed a Stipulation that reflected the resolution between JA and Staff of all but one contested issue relating to the terms and provisions of the proposed OA.<sup>7</sup> Attached to the Stipulation was a draft OA that identified the language that remained at issue between JA and Staff in Section 2.2(e).<sup>8</sup>

An evidentiary hearing limited to OA issues was held on May 23, 2011 before a duly-authorized ALJ of the Commission at its offices in Chicago. At the evidentiary hearing, JA, Staff, AG and CUB entered appearances. Mr. O'Connor and Dr. Ros testified on behalf of JA and Mr. Sackett testified on behalf of Staff and their pre-filed testimony was admitted into the record. The testimonies of Mr. Erickson on behalf of JA, Ms. Hathhorn on behalf of Staff and Mr. Efron on behalf of AG/CUB were presented via affidavit and admitted into the record. The Stipulations between JA and Staff and JA

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<sup>5</sup> NG Ex. 8.0.

<sup>6</sup> *Id.* at 1.

<sup>7</sup> JA Ex. 7.0 at 1.

<sup>8</sup> JA Ex. 7.1.

and RESA and IGS were admitted into evidence at the hearing.<sup>9</sup> Certain additional materials were received into the record by order of the ALJ.

On May 26, 2011, JA filed the rebuttal testimony of the following witnesses: Mr. Linginfelter, Mr. Cave, Ms. Reese, Mr. O'Connor, and Richard Lonn, Director of Regulatory Compliance for AGL.

On June 20, 2011, JA, Staff and AG/CUB filed their respective post-hearing Initial Briefs regarding OA issues ("IB-OA").

On June 23, 2011, Staff and AG/CUB filed rebuttal testimony. The following witnesses presented rebuttal testimony on behalf of Staff: Mr. Bridal, Ms. Hathhorn, Ms. Phipps, Dr. Rearden, Mr. Maple, and Mr. Burk. Mr. Effron presented rebuttal testimony on behalf of AG/CUB.

On July 8, 2011, JA filed the surrebuttal testimony of the following witnesses: Mr. Linginfelter, Mr. Cave, Ms. Reese and Mr. O'Connor.

On July 12, 2011, JA, Staff and AG/CUB filed their respective post-hearing Reply Briefs regarding OA issues ("RB-OA").

Evidentiary hearings were held on July 19 and 20, 2011 on issues relating to the requirements of Section 7-204 of the Act before a duly-authorized ALJ of the Commission at its offices in Chicago. At these evidentiary hearings, JA, Staff, AG and CUB entered appearances and presented testimony. RESA and IGS also entered appearances. Mr. O'Connor, Mr. Cave, Ms. Reese, Mr. Linginfelter, and Mr. D'Alessandro testified on behalf of JA and their pre-filed testimony was admitted into the record. Mr. Bridal, Ms. Phipps and Mr. Maple testified on behalf of Staff and their pre-filed testimony was admitted into the record. Mr. Effron testified on behalf of AG/CUB and his pre-filed testimony was admitted into the record. The testimonies of Mr. McCain and Mr. Lonn on behalf of JA and Mr. Stoller, Ms. Hathhorn, Dr. Rearden and Mr. Burk on behalf of Staff were presented via affidavit and admitted into the record. Certain additional materials were received into the record by order of the ALJ.

On August 18, 2011, JA, Staff and AG/CUB filed their respective post-hearing Initial Briefs ("IB").

Pursuant to the request of the ALJ, on August 18, 2011, JA submitted a Draft Order addressing all matters other than the contested issues. The Draft Order was circulated and agreed to by Staff, AG, CUB, RESA and IGS.

On September 1, 2011, JA, Staff and AG/CUB filed their respective post-hearing Reply Briefs ("RB").

On \_\_\_\_\_, 2011, the record was marked "Heard and Taken" by the ALJ.

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<sup>9</sup> JA Ex. 7.0 and NG Ex. 8.0, respectively.

## **II. THE PROPOSED REORGANIZATION**

### **A. Identification of the Parties to the Reorganization and Their Affiliates**

#### **1. AGL and Its Affiliates**

AGL is a Georgia corporation headquartered in Atlanta, Georgia.<sup>10</sup> AGL's principal business is the distribution of natural gas through public utility operating companies in six states: Florida, Georgia, Maryland, New Jersey, Tennessee, and Virginia: Atlanta Gas Light in Georgia; Chattanooga Gas in Tennessee; Elizabethtown Gas in New Jersey; Elkton Gas in Maryland; Florida City Gas in Florida; and Virginia Natural Gas in Virginia.<sup>11</sup> AGL's six utility companies currently serve approximately 2.3 million end-use customers.<sup>12</sup> They each construct, operate, and maintain intrastate natural gas pipelines and distribution facilities.<sup>13</sup> AGL also is involved in several related and complementary businesses, including retail natural gas marketing to end-use customers, primarily in Georgia; natural gas asset management and related logistics activities for each of its utilities and nonaffiliated companies; natural gas storage arbitrage and related activities; and the development and operation of high-deliverability natural gas storage assets.<sup>14</sup> AGL manages these businesses through four operating segments and a non-operating corporate segment.<sup>15</sup>

#### **2. NI and Its Affiliates**

NI owns NG and other subsidiaries, including several energy-related businesses.<sup>16</sup> NG is an Illinois public utility within the meaning of Section 3-105 of the Act.<sup>17</sup> NG provides regulated natural gas service in 643 communities in Northern and Central Illinois, serving approximately 2.2 million customers in urban, suburban, and rural areas of Illinois.<sup>18</sup>

### **B. The Reorganization**

NI, AGL, Apollo Acquisition Corporation, an Illinois corporation and a wholly-owned subsidiary of AGL ("Apollo"), and Ottawa Acquisition LLC, an Illinois limited liability company and a wholly-owned subsidiary of AGL ("Ottawa"), have entered into an Agreement and Plan of Merger, dated December 6, 2010 (the "Merger Agreement").<sup>19</sup> Pursuant to the Merger Agreement: (1) AGL will acquire the stock of NI

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<sup>10</sup> Application at 2.

<sup>11</sup> Application at 2; JA Ex. 1.0 at 1, 4.

<sup>12</sup> Application at 2; JA Ex. 1.0 at 4.

<sup>13</sup> Application at 2; JA Ex. 1.0 at 4.

<sup>14</sup> Application at 2-3; JA Ex. 1.0 at 4-5.

<sup>15</sup> Application at 3.

<sup>16</sup> Application at 3.

<sup>17</sup> *Id.*; 220 ILCS 5/3-105.

<sup>18</sup> Application at 3; JA Ex. 2.0 at 3.

<sup>19</sup> Application at 3; JA Ex. 1.1.

by exchanging that stock for a combination of cash and AGL stock; (2) Apollo will merge with and into NI; and (3) Apollo/NI will merge with and into Ottawa with the surviving company remaining a wholly-owned subsidiary of AGL (the “Merger”).<sup>20</sup> Upon consummation of the Reorganization (the “Closing”), NG will become a wholly-owned subsidiary of AGL.<sup>21</sup> NG will retain its current name, corporate form, and headquarters in Naperville, Illinois, and will continue to operate as an Illinois public utility, subject to the Commission’s jurisdiction and applicable Illinois law and regulations.<sup>22</sup>

### **C. Asserted Results of the Reorganization**

In combining the second and third largest pure natural gas distribution companies in the United States, JA assert that the Reorganization will create one of the lowest-cost, most diversified families of natural gas utilities in the country, guided by a seasoned and well-respected management team.<sup>23</sup> JA also assert that the Reorganization will be seamless for NG customers as they will continue to receive service from NG in the same fashion and pursuant to the same rates, terms and conditions upon which they now receive service.<sup>24</sup> JA further assert that, over time, NG customers will benefit as NG will share best practices with its affiliated utilities and realize the positive impacts of greater scale.<sup>25</sup> JA witness Linginfelter testified that an example of one such benefit would be NG’s utilization of the GIS system used by AGL utilities that marks where gas mains are located and is used in conjunction with Google Earth technology to map the distance of gas mains to customers’ residences.<sup>26</sup>

AGL asserts that it is capable, willing, and ready to undertake the Reorganization.<sup>27</sup> AGL states that it has a proven track record of acquiring and integrating natural gas distribution utilities and utility holding companies.<sup>28</sup> AGL further states that it brings to the Reorganization a team of highly qualified leaders, managers, and employees, which has many years of experience running utilities effectively and efficiently, and providing safe, reliable, and cost-effective energy delivery and responsive customer service.<sup>29</sup>

JA state that AGL has strong investment-grade credit ratings and substantial financial resources.<sup>30</sup> JA further state that AGL will give NG a larger financial platform for making investments to maintain safety and improve reliability and customer

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<sup>20</sup> Application at 3; JA Ex. 1.0 at 6.

<sup>21</sup> Application at 3; JA Ex. 1.0 at 6.

<sup>22</sup> Application at 3-4; JA Ex. 2.0 at 6-7.

<sup>23</sup> Application at 4; JA Ex. 1.0 at 5-6.

<sup>24</sup> Application at 4; JA Ex. 1.0 at 7; JA Ex. 2.0 at 6-8.

<sup>25</sup> Application at 4; JA Ex. 1.0 at 7, 9.

<sup>26</sup> Tr. 669.

<sup>27</sup> Application at 4; JA Ex. 1.0 at 3-8.

<sup>28</sup> Application at 4; JA Ex. 1.0 at 4-5.

<sup>29</sup> Application at 4.

<sup>30</sup> Application at 5; JA Ex. 3.0 at 4, 7.



service.<sup>31</sup> JA assert that NG's customers will continue to enjoy excellence in customer service under AGL ownership.<sup>32</sup> JA do not seek a general increase in NG's rates as a condition of the Reorganization.<sup>33</sup>

AGL also emphasizes positive employee relations as AGL has committed to maintaining the level of full-time equivalent ("FTE") employees across NG's service territory for a period of at least three years and to fully honoring NG's existing collective bargaining agreements.<sup>34</sup> More particularly, JA have made a dual commitment to maintain 2,070 FTEs, which is based on the number of FTEs at NG as of December 31, 2010<sup>35</sup>, in support of NG's business *and* in the state of Illinois.<sup>36</sup> The 2,070 FTEs may not be the same for each commitment because there may be ten employees located in another state providing services to NG, while at the same time ten employees in Illinois may be providing services to AGL entities other than NG.<sup>37</sup>

JA assert that AGL and NG both have strong traditions of community service and commitment to the communities they serve, supporting a variety of civic, community, and philanthropic efforts, which will continue after the Closing.<sup>38</sup> JA also assert that it is in the best interests of JA and the communities that NG serves that the economic prospects of those communities be enhanced, and that NG continues to have a visible local presence.<sup>39</sup>

### **III. APPLICABLE STATUTORY AUTHORITY**

#### **A. Section 7-101 of the Act**

The standard of approval under Section 7-101 of the Act, which governs certain transactions between affiliated interests, is that the agreement is in the public interest. In particular, the "Commission may condition [its] approval in such manner as it may deem necessary to safeguard the public interest."<sup>40</sup>

#### **B. Section 7-204 of the Act**

Section 7-204 of the Act provides that:

(a) For purposes of this Section, "reorganization" means any transaction which, regardless of the means by which it is

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<sup>31</sup> Application at 5; JA Ex. 3.0 at 5-6.

<sup>32</sup> Application at 5; JA Ex. 1.0 at 3, 7; JA Ex. 2.0 at 6-8.

<sup>33</sup> Application at 5; JA Ex. 1.0 at 6; JA Ex. 6.0 at 7.

<sup>34</sup> Application at 5; JA Ex. 1.0 at 7, JA Ex. 1.1 at 75; JA Ex. 4.0 at 5; Tr. 665 (Linginfelter).

<sup>35</sup> Tr. 407 (O'Connor).

<sup>36</sup> Tr. 572-73 (Reese).

<sup>37</sup> *Id.* 573 (Reese).

<sup>38</sup> Application at 5; JA Ex. 1.0 at 5, 7; JA Ex. 1.1 at 75.

<sup>39</sup> Application at 5.

<sup>40</sup> 220 ILCS 5/7-101(3).



accomplished, results in a change in the ownership of a majority of the voting capital stock of an Illinois public utility; or the ownership or control of any entity which owns or controls a majority of the voting capital stock of a public utility; or by which 2 public utilities merge, or by which a public utility acquires substantially all of the assets of another public utility; provided, however, that "reorganization" as used in this Section shall not include a mortgage or pledge transaction entered into to secure a bona fide borrowing by the party granting the mortgage or making the pledge.

In addition to the foregoing, "reorganization" shall include for purposes of this Section any transaction which, regardless of the means by which it is accomplished, will have the effect of terminating the affiliated interest status of any entity as defined in paragraphs (a), (b), (c) or (d) of subsection (2) of Section 7-101 of this Act where such entity had transactions with the public utility, in the 12 calendar months immediately preceding the date of termination of such affiliated interest status subject to subsection (3) of Section 7-101 of this Act with a value greater than 15% of the public utility's revenues for that same 12-month period. If the proposed transaction would have the effect of terminating the affiliated interest status of more than one Illinois public utility, the utility with the greatest revenues for the 12-month period shall be used to determine whether such proposed transaction is a reorganization for the purposes of this Section. The Commission shall have jurisdiction over any reorganization as defined herein.

(b) No reorganization shall take place without prior Commission approval. The Commission shall not approve any proposed reorganization if the Commission finds, after notice and hearing, that the reorganization will adversely affect the utility's ability to perform its duties under this Act. In reviewing any proposed reorganization, the Commission must find that:

(1) the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service;

(2) the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers;

(3) costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes;

(4) the proposed reorganization will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;

(5) the utility will remain subject to all applicable laws, regulations, rules, decisions, and policies governing the regulation of Illinois public utilities;

(6) the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction;

(7) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers.<sup>41</sup>

Finally, Section 7-204(c) of the Act states that the Commission shall not approve a reorganization without ruling on (i) the allocation of any savings resulting from the proposed reorganization; and (ii) whether the companies should be allowed to recover any costs incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated.<sup>42</sup>

### **C. Section 7-204A of the Act**

Section 7-204A(a) of the Act sets forth the minimum information that must be included in an application for approval of reorganization pursuant to Section 7-204.<sup>43</sup> Section 7-204A(b) of the Act provides that an agreement involving the use of any public utility employee's services by an affiliated interest, and the occasional transfer of assets between a public utility and an affiliate, is subject to the Commission's review "in the same manner as it may review any other public utility and its affiliated interest."<sup>44</sup>

## **IV. REQUESTED FINDINGS AND APPROVALS**

### **A. Relief Requested**

JA request the following findings and approvals by the Commission:

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<sup>41</sup> 220 ILCS 5/7-204(a) and (b).

<sup>42</sup> 220 ILCS 5/7-204(c).

<sup>43</sup> 220 ILCS 5/7-204A(a).

<sup>44</sup> 220 ILCS 5/7-204A(b).

1. the Commission's approval, under Sections 7-204 and 7-204A of the Act, to engage in the Reorganization, through which NG will become a subsidiary of AGL<sup>45</sup>;
2. the Commission's approval under Section 7-102 of the Act (to the extent required) to engage in the Reorganization<sup>46</sup>;
3. the Commission's authorization, pursuant to Sections 7-101 and 7-204A(b) of the Act, for entry by NG into: 1) an OA governing transactions between NG and its current affiliates, as well as with AGL and AGSC; 2) a Services Agreement ("SA") governing allocations to NG from AGSC, the shared services subsidiary of AGL; 3) four agreements with Sequent Energy Management, LP ("Sequent"), AGL's wholesale gas marketing subsidiary—a Gas Exchange agreement, an Interstate Hub Service Agreement, an Intrastate Hub Service Agreement, and a Base Contract for Sale and Purchase of Natural Gas ("NAESB")—as well as capacity release arrangements between NG and Sequent in accordance with the Federal Energy Regulatory Commission's ("FERC") capacity release rules; and 4) the Tax Allocation Agreement Among Members of the AGL Resources Inc. Affiliated Group ("TAA"), as amended to include the surviving NI companies as parties to that agreement<sup>47</sup>;
4. the Commission's approval of any required proposed accounting entries associated with the Reorganization<sup>48</sup>; and
5. the Commission's authorization for taking such other measures in connection with the Reorganization as may be reasonably necessary for effecting the Reorganization<sup>49</sup>.

## **B. Section 7-204: Reorganization Approvals**

JA request approval of the Merger as a "reorganization" within the meaning of Section 7-204(a) of the Act.<sup>50</sup> Section 7-204(b) further requires that the Commission make a series of findings, each of which is addressed below.<sup>51</sup> As to many of the findings required under Section 7-204, JA accepted certain conditions to the Commission's approval of the Merger that were recommended by Staff witnesses. A listing of the agreed-upon conditions is found in Attachment A to this Order.

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<sup>45</sup> Application at 6.

<sup>46</sup> *Id.*

<sup>47</sup> Application at 6, 8, 12-13 and Att. A, *Information Required Pursuant to 220 ILCS 5/7-204A(a)(5)*; JA Ex. 6.0 at 12-13; Staff Ex. 8.0 at 18 and Att. B.

<sup>48</sup> Application at 6.

<sup>49</sup> *Id.*

<sup>50</sup> Application at 7; 220 ILCS 5/7-204(a).

<sup>51</sup> 220 ILCS 5/7-204(b).

1. **Finding 1: “the proposed reorganization will not diminish the utility’s ability to provide adequate, reliable, efficient, safe and least-cost public utility service”**

- a) **The Record**

[INSERT]

- b) **Commission Analysis and Conclusion**

[INSERT]

2. **Finding 2: “the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers,” and**

**Finding 3: “costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes”**

- a) **The Record**

JA and Staff submitted testimony addressing whether the proposed Reorganization would satisfy the criteria of Sections 7-204(b)(2) and (b)(3) of the Act.

JA witnesses Reese and O’Connor testified that the Reorganization satisfies the requirements of Sections 7-204(b)(2) and (b)(3). Specifically, they testified that the Reorganization includes appropriate contractual requirements, allocation standards, and compliance processes to ensure that AGL’s nonutility activities, including the activities of its non-regulated subsidiaries, will not be subsidized by either NG or its customers.<sup>52</sup> In addition, the operations of one regulated subsidiary will not be subsidized by another.<sup>53</sup> All of these measures keep corporate costs and inter-company transfers properly allocated.<sup>54</sup> Further, AGL and NG have systems in place for ensuring fair and accurate allocation of costs and facilities between utility and non-utility activities.<sup>55</sup> Finally, NG will continue to adhere to the Commission’s Uniform System of Accounts for Gas Utilities.<sup>56</sup>

Pursuant to the Reorganization, JA seek several approvals to address NG’s transactions with affiliates: (1) an OA, which will govern transactions between NG and

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<sup>52</sup> Application at 8; JA Ex. 5.0 at 4-11; JA Ex. 6.0 at 7-12.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Application at 9; JA Ex. 5.0 at 4-11; JA Ex. 6.0 at 12.

<sup>56</sup> Application at 9.

its current affiliates, as well as with AGL and AGSC<sup>57</sup>; (2) a SA between NG and AGSC; (3) four existing agreements with Sequent—a Gas Exchange agreement, an Interstate Hub Service Agreement, an Intrastate Hub Service Agreement, and a NAESB—as well as capacity release arrangements between NG and Sequent from time to time in accordance with FERC’s capacity release rules; and (4) the TAA, as amended to include the surviving NI companies as parties to that agreement.<sup>58</sup>

Staff witnesses Hathhorn and Rearden testified concerning whether the proposed Reorganization would comply with the requirements of Sections 7-204(b)(2)-(3). Specifically, Ms. Hathhorn stated that she recommended the Commission approve the OA, the SA, and the TAA, and that the Reorganization can be found to comply with Sections 7-204(b)(2) and (b)(3) if JA are subject to the following conditions: (1) on the OA, require AGSC to pay NG fully distributed cost for services provided to AGSC; (2) on the SA, add an access to records paragraph; (3) on the SA, changes in allocation method will be filed with the Commission; (4) an annual Internal Audit will be required on the SA; (5) a triennial cost study will be required of the services provided under the SA; (6) the annual filing of a Billing Report for the SA will be required; (7) human resources-related costs will be directly charged or assigned; (8) JA will file an executed copy of the TAA on e-Docket; and (9) JA will file the final disposition of journal entries on e-Docket.<sup>59</sup>

Dr. Rearden also made several recommendations regarding the Reorganization’s compliance with respect to affiliate transactions: (1) Sequent should not be a party to the NG OA; (2) the four agreements that JA seek approval of under Section 7-204A(a)(5) should be approved; (3) JA should consult with Staff and receive Commission approval before JA sign an asset management agreement; and (4) there should be no right of last refusal for Sequent on spot purchases.<sup>60</sup>

JA accepted the conditions to the Commission’s approval of the Merger that were recommended by Staff witness Hathhorn in connection with her evaluation of compliance with Sections 7-204(b)(2) and (b)(3), as further clarified through rebuttal and surrebuttal testimony.<sup>61</sup> Similarly, JA accepted the recommendations of Staff witness Rearden in connection with his evaluation of compliance with Sections 7-204(b)(2) and (b)(3).<sup>62</sup>

In addition to the SA, the OA and the TAA, JA’s submission with respect to the minimum filing requirements under Section 7-204A(a)(5) included the four existing agreements between NG and Sequent, which were submitted for approval as affiliate

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<sup>57</sup> Further discussion of the evidence and the Commission’s findings regarding the proposed OA are located in Section IV.E. of this Order.

<sup>58</sup> Application at 6, 8, 12-13 and Att. A, *Information Required Pursuant to 220 ILCS 5/7-204A(a)(5)*; JA Ex. 5.0 at 2; JA Ex. 6.0 at 4, 12-13; Staff Ex. 8.0 at 18 and Att. B.

<sup>59</sup> Staff Ex. 8.0 at 4-20.

<sup>60</sup> Staff Ex. 10.0 at 13-14.

<sup>61</sup> JA Ex. 10.0 at 2; Staff Ex. 14.0 at 7-8; JA Ex. 15.0 at 1-2.

<sup>62</sup> JA Ex. 8.0 at 11-13; JA Ex. 11.0 at 8-9; JA Ex. 13.0 at 6-7.

interest agreements post-reorganization.<sup>63</sup> Staff witness Rearden recommended approval of these agreements.<sup>64</sup>

Finally, no party objected to JA's request for approval for entry by NG into capacity release arrangements with Sequent from time to time in accordance with FERC's capacity release rules.

## **b) Commission Analysis and Conclusion**

[INSERT]

### **3. Finding 4: "the proposed reorganization will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure"**

#### **a) The Record**

JA and Staff submitted testimony addressing whether the proposed Reorganization would satisfy the criteria of Section 7-204(b)(4) of the Act. No other party presented testimony to address this requisite Commission finding.

JA witness Cave testified that the Reorganization satisfies the requirements of Section 7-204(b).<sup>65</sup> In particular, the Reorganization will not impair NG's ability to raise capital on reasonable terms or to maintain a reasonable capital structure because, given AGL's and NG's favorable financial positions, NG will continue to have access to both long-term and short-term capital markets at a reasonable cost.<sup>66</sup>

Staff witness Phipps testified concerning whether the proposed Reorganization would comply with the requirements of Section 7-204(b)(4). Specifically, Ms. Phipps stated that the Reorganization will not satisfy the requirements of Section 7-204(b)(4) unless JA are subject to the following two conditions: (1) there will be a separate credit facility for NG; and (2) a compliance report will be filed following reorganization, with a copy to the Manager of the Commission's Finance Department, providing copies of post-merger NG credit facilities.<sup>67</sup> JA accepted the conditions to the Commission's approval of the Merger that were recommended by Staff witness Phipps in connection with her evaluation of compliance with Sections 7-204(b)(4).<sup>68</sup>

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<sup>63</sup> Application, Att. A, *Information Required Pursuant to 220 ILCS 5/7-204A(a)(5)*.

<sup>64</sup> Staff Ex. 10.0 at 7, 13.

<sup>65</sup> Application at 9; JA Ex. 3.0 at 2-9.

<sup>66</sup> *Id.*

<sup>67</sup> Staff Ex. 9.0 at 3-14.

<sup>68</sup> JA Ex. 9.0 at 2-4.

## **b) Commission Analysis and Conclusion**

Based on the evidence of record and in light of JA's acceptance of the conditions proposed by Staff witness Phipps, the Commission concludes that the Reorganization will not significantly impair NG's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure, provided NG complies with Staff's proposed condition and reporting requirement, as provided herein, after the Reorganization. Accordingly, the Commission finds that the proposed Reorganization satisfies the criteria of Section 7-204(b)(4) of the Act.

### **4. Finding 5: "the utility will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities"**

#### **a) The Record**

JA and Staff addressed whether the proposed Reorganization would satisfy the criterion of Section 7-204(b)(5) of the Act. No other party presented testimony to address this requisite Commission finding.

JA witnesses Linginfelter, D'Alessandro, and O'Connor testified that NG will not, itself, merge or change corporate form as a consequence of the Reorganization; it will remain an Illinois public utility following the Reorganization.<sup>69</sup> As a result, it will remain subject to all applicable laws, regulations, rules, decisions, and policies governing the regulation of Illinois public utilities.<sup>70</sup>

JA agreed to have a number of conditions relating to pipeline safety placed in the Order approving the Reorganization. These conditions were initiated by Staff witness Burk in his testimony concerning whether the proposed Reorganization would comply with the requirements of Section 7-204(b)(5), as amended through rebuttal testimony.<sup>71</sup> As testified to by JA witness Linginfelter, JA have committed for a period of five years following the closing of the Reorganization to:

1. Maintain in Illinois the current number of FTEs—51 full and 24 partial—in the following areas : Corrosion Control, the Technical Compliance Department, the Locating Services Department, the Transmission Integrity Management Program, and the Distribution Integrity Management Program;<sup>72</sup>
2. Maintain in Illinois management personnel directly responsible for the day-to-day supervision of the positions identified in paragraph 1;<sup>73</sup>

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<sup>69</sup> Application at 9; JA Ex. 1.0 at 12; JA Ex. 2.0 at 6-7; JA Ex. 6.0 at 4.

<sup>70</sup> Application at 9-10; JA Ex. 1.0 at 12; JA Ex. 2.0 at 6-7; JA Ex. 6.0 at 4-5.

<sup>71</sup> Staff Ex. 12.0 at 2-23; Staff Ex. 18.0 at 7-8.

<sup>72</sup> Staff Ex. 12.0 at 20-23; Staff Ex. 18.0 at 7; JA Ex. 12.2; JA Ex. 13.0 at 4, 8.

<sup>73</sup> Staff Ex. 18.0 at 7; JA Ex. 13.0 at 4, 8.



3. Maintain in Illinois the current level of training and quality assurance programs for compliance monitoring activities;<sup>74</sup> and
4. Meet with the Commission Staff's Pipeline Safety Program Manager, or his designee(s), to discuss any proposed material change(s) to the job duties for any of the positions identified in paragraph 1.<sup>75</sup>

In accordance with Mr. Burk's recommendations, JA also agreed that NG will petition the Commission 90 days prior to the end of the five-year period to determine whether NG's performance concerning pipeline safety issues is reasonably comparable to pre-reorganization levels at NG, or requires an extension of the commitment period for the items identified in paragraphs 1 and 2 beyond five years.<sup>76</sup> Further, JA agreed that NG will review the petition and performance with Staff 60 days before filing such petition.<sup>77</sup> With these agreements from JA, Mr. Burk concluded that the Reorganization can be found to comply with Section 7-204(b)(5).<sup>78</sup>

Finally, with JA's agreement to resolve the issues presented in Mr. Burk's testimony, as Mr. Burk indicated in his rebuttal testimony<sup>79</sup>, it is Staff witness Stoller's position that the proposed transaction meets the requirements of Section 7-204(b)(5).<sup>80</sup>

#### **b) Commission Analysis and Conclusion**

Based on the evidence presented by JA and Staff witnesses Burk and Stoller, and JA's acceptance of the conditions proposed by Mr. Burk, the Commission concludes that NG will remain subject to all applicable laws, regulations, rules, decisions, and policies governing the regulation of Illinois public utilities. Accordingly, the Commission finds that the proposed Reorganization satisfies the criterion of Section 7-204(b)(5) of the Act.

5. **Finding 6: "the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction"**

#### **a) The Record**

JA and Staff addressed whether the proposed Reorganization would satisfy the criterion of Section 7-204(b)(6) of the Act. Although RESA and IGS presented direct

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<sup>74</sup> Staff Ex. 18.0 at 7; JA Ex. 13.0 at 4, 8.

<sup>75</sup> Staff Ex. 18.0 at 8; JA Ex. 13.0 at 4, 8.

<sup>76</sup> Staff Ex. 18.0 at 8; JA Ex. 13.0 at 4, 8.

<sup>77</sup> Staff Ex. 18.0 at 8; JA Ex. 13.0 at 4, 8.

<sup>78</sup> Staff Ex. 18.0 at 7-8.

<sup>79</sup> Staff Ex. 18.0 at 7.

<sup>80</sup> JA Ex. 13.2.

testimony relating to competition, that testimony was withdrawn after all the concerns of the competitive providers were resolved by Stipulation.<sup>81</sup>

JA witnesses Linginfelter and O'Connor testified that the Reorganization should have no significant adverse impact on the competitive retail gas markets in Illinois.<sup>82</sup> Pursuant to the Act and NG's tariffs, NG's retail gas customers may purchase their gas supply from suppliers other than NG and have the third-party gas supplies delivered to them over NG's gas distribution systems and these competitive activities will not be adversely affected as a result of the Reorganization.<sup>83</sup> Staff witness Rearden recommended that the Commission make the required finding under Section 7-204(b)(6) that the proposed transaction is not likely to have a significant adverse effect on competition for both the small customer transportation market and the large customer transportation market.<sup>84</sup>

**b) Commission Analysis and Conclusion**

Based on the evidence of record and in light of Staff witness Rearden's recommendations, the Commission concludes that the proposed Reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction. Furthermore, we note that no party is contending that the criterion of Section 7-204(b)(6) will not be met. Accordingly, the Commission finds that the proposed Reorganization satisfies the criterion of Section 7-204(b)(6) of the Act.

**6. Finding 7: "the proposed reorganization is not likely to result in any adverse rate impacts on retail customers"**

**a) The Record**

[INSERT]

**b) Commission Analysis and Conclusion**

[INSERT]

**C. Treatment of Costs and Savings under Section 7-204(c)**

**1. The Record**

[INSERT]

**2. Commission Analysis and Conclusion**

[INSERT]

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<sup>81</sup> NG Ex. 8.0.

<sup>82</sup> Application at 10; JA Ex. 1.0 at 12-13; JA Ex. 6.0 at 3, 5-7.

<sup>83</sup> Application at 10; JA Ex. 6.0 at 5-7.

<sup>84</sup> Staff Ex. 10.0 at 3-7; Staff Ex. 16.0 at 1-2.

## **D. Approval Under Section 7-102 of the Act**

### **1. The Record**

JA's Application references Section 7-102<sup>85</sup>, which requires Commission approval whenever a "public utility may by any means, direct or indirect, merge or consolidate its franchises, licenses, permits, plants, equipment, business or other property with that of any other public utility."<sup>86</sup> It also requires Commission approval for a public utility to "assign, transfer, lease, mortgage, sell (by option or otherwise), or otherwise dispose of or encumber the whole or any part of its franchises, licenses, permits, plant, equipment, business, or other property...."<sup>87</sup>

JA note that Section 7-204(e) expressly provides that "[n]o other Commission approvals shall be required for mergers that are subject to this Section."<sup>88</sup> JA state that they do not believe that either Section 7-102(A)(c) or (d) apply to the Reorganization, because the Reorganization does not involve a direct or indirect merger or consolidation of two utilities' businesses or property and is not a sale or disposition of a utility's business or property, but rather is a change in control transaction subject to Sections 7-204 and 7-204A.<sup>89</sup> However, JA state that if the Commission were to determine that the Reorganization is also subject to Section 7-102, the information submitted in support of the Application is sufficient to meet the requirements of Section 7-102, so that any approval deemed necessary pursuant to Section 7-102 should be granted.<sup>90</sup>

No party other than JA presented evidence regarding Section 7-102.

### **2. Commission Analysis and Conclusion**

[INSERT]

## **E. Request for Approval of Agreements with Affiliated Interests Under Sections 7-101 and 7-204A(b)**

### **1. Agreed Resolution of Issues**

#### **a) The OA**

JA entered into a settlement with RESA and IGS, which was attached to the Stipulation admitted into evidence at the May 23, 2011.<sup>91</sup> The Stipulation between JA

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<sup>85</sup> Application at 11-12.

<sup>86</sup> 220 ILCS 5/7-102(A)(d).

<sup>87</sup> 220 ILCS 5/7-102(A)(c).

<sup>88</sup> Application at 12, quoting 220 ILCS 5/7-204(e).

<sup>89</sup> Application at 12.

<sup>90</sup> *Id.*

<sup>91</sup> NG Ex. 8.0.

and RESA and IGS resolved all of RESA's and IGS' issues concerning customer choice and competition related to the proposed OA and other issues.<sup>92</sup>

JA also resolved with Staff all but one contested issue relating to the terms and provisions of the proposed OA. The remaining contested issue between JA and Staff is discussed below in subsection (2). The resolution of all other OA matters between JA and Staff was reflected in a Stipulation admitted into evidence at the May 23, 2011 evidentiary hearing.<sup>93</sup> Attached to the Stipulation between JA and Staff was a copy of the proposed OA reflecting the agreed resolution and competing language from JA and Staff on the remaining contested issue.<sup>94</sup>

Specifically, JA agreed to numerous modifications reflected in the proposed OA that addressed all of Staff witness Hathhorn's recommendations and all but one of Staff witness Sackett's recommendations, including, but not limited to, the following:

- Broadening the definition of prevailing price and making other pricing changes<sup>95</sup>;
- Requiring an annual internal audit that tests compliance with the OA's terms<sup>96</sup>;
- Requiring disclosure of certain written sub-agreements<sup>97</sup>;
- Removing non-descriptive phrases<sup>98</sup>;
- Not authorizing NG to perform repair services under the OA on behalf of its affiliate, Nicor Energy Services ("NS"), in fulfillment of obligations NS has to its customers under the Gas Line Comfort Guard warranty product sold by NS<sup>99</sup>;
- Authorizing NG under the OA to provide billing services for affiliate products only if NG offers similar billing services under specified circumstances to non-affiliated participants in the NG Customer Select program or their affiliates<sup>100</sup>; and
- Authorizing NG under the OA to use website links that transfers a user from a webpage describing NG products or services directly to a webpage soliciting affiliate products or services only if the transfer is clearly and conspicuously disclosed<sup>101</sup>.

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<sup>92</sup> *Id.*

<sup>93</sup> JA Ex. 7.0.

<sup>94</sup> JA Ex. 7.1.

<sup>95</sup> JA Ex. 7.1 at 9-10, Section 5.1(b)(iv).

<sup>96</sup> JA Ex. 7.1 at 15-16, Section 10.1.

<sup>97</sup> JA Ex. 7.1 at 6, Section 2.4.

<sup>98</sup> JA Ex. 7.1, *passim*.

<sup>99</sup> JA Ex. 7.1 at 5-6, Section 2.2(iii)(A).

<sup>100</sup> JA Ex. 7.1 at 6, Section 2.2(iii)(B).

<sup>101</sup> JA Ex. 7.1 at 6, Section 2.2(iii)(C).

## **b) Other Agreements**

As discussed in Section IV.B.2.a. of this Order, Staff has recommended the Commission's approval of the SA and the TAA subject to certain conditions to which JA have agreed. In addition, Staff has recommended the Commission's approval of the following four existing agreements between NG and Sequent—a Gas Exchange agreement, an Interstate Hub Service Agreement, an Intrastate Hub Service Agreement, and a NAESB. Finally, JA have requested approval of capacity release arrangements between NG and Sequent from time to time in accordance with FERC's capacity release rules, and no party has objected to this request.

## **2. Contested Issues Regarding the OA**

[INSERT]

## **3. Commission Analysis and Conclusion**

### **a) The OA**

[INSERT]

### **b) Other Agreements**

As discussed in Section IV.B.2.b. of this Order, the evidence presented by JA and Staff supports our approval of the SA and the TAA, subject to the conditions described above, the four existing agreements between NG and Sequent and capacity release arrangements between NG and Sequent in accordance with FERC's capacity release rules.

## **F. Other Approvals**

### **1. The Record**

Staff witness Phipps made two recommendations with respect to approval of the proposed transaction: (1) NG will file a post-merger report, with a copy to the Manager of the Commission's Finance Department, that describes NG's post-merger capital structure and identifies capital structure adjustments that result from the Reorganization to address Section 6-103 of the Act<sup>102</sup> and, if there are push down accounting adjustments to NG's balance sheet, then NG will also file a petition seeking Commission approval of a fair value study and resulting capital structure pursuant to Section 6-103; and (2) NG will revise its short-term borrowing addendum to the OA, consistent with the proposed changes presented in ICC Staff Ex. 9.0, Attachment 9.2, to comply with the Commission's money pool rules<sup>103</sup> by permitting NG to borrow from non-utility affiliates

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<sup>102</sup> 220 ILCS 5/6-103.

<sup>103</sup> 83 Ill. Adm. Code 340.

but not permitting NG to make any cash advances to non-utility affiliates.<sup>104</sup> JA agreed to comply with these recommendations as part of the approval of the Reorganization.<sup>105</sup>

Staff witness Hathhorn also recommended that, as a condition of the Reorganization's approval, JA be required to file a semi-annual compliance report on the ICC's e-Docket system in Docket No. 11-0046, reporting on the status of progress of all conditions imposed by the Commission in this case.<sup>106</sup> Ms. Hathhorn recommended that this reporting requirement should remain in effect until all conditions have been satisfied or JA petition the Commission and receive approval to cease such reporting requirement, whichever comes first.<sup>107</sup> JA witness Reese accepted this recommendation on behalf of all the conditions accepted by all JA witnesses.<sup>108</sup>

## **2. Commission Analysis and Conclusion**

[INSERT]

## **V. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) NG is an Illinois corporation that is engaged in the distribution of natural gas to the public at retail in this State; NG is a "public utility" as that term is defined in Section 3-105 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) pursuant to Section 7-204 of the Act, and subject to the conditions of approval set forth in this Order, the Commission finds that:
  - (A) [INSERT]
  - (B) [INSERT]
  - (C) [INSERT]

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<sup>104</sup> Staff Ex. 9.0 at 16-22.

<sup>105</sup> JA Ex. 9.0 at 3, 10-11.

<sup>106</sup> Staff Ex. 14.0 at 6-7.

<sup>107</sup> *Id.* at 7.

<sup>108</sup> JA Ex. 15.0 at 2-3.

- (D) the proposed Reorganization will not significantly impair the ability of NG to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;
  - (E) NG will remain subject to all applicable laws, regulations, rules, decisions, and policies governing the regulation of Illinois public utilities;
  - (F) the proposed Reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction; and
  - (G) [INSERT]
- (5) NG will file a post-merger report, with a copy to the Manager of the Commission's Finance Department, that describes NG's post-merger capital structure and identifies capital structure adjustments that result from the Reorganization. If there are push down accounting adjustments to NG's balance sheet, then NG will also file a petition seeking Commission approval of a fair value study and resulting capital structure pursuant to Section 6-103; and
  - (6) NG will revise its short-term borrowing addendum to the OA to comply with 83 Ill. Adm. Code 340.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that,  
[INSERT]

IT IS FURTHER ORDERED that any objections, motions or petitions filed in this proceeding that remain unresolved should be disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Act and 83 Illinois Administrative Code 200.880, this Order is final, it is not subject to the Administrative Review Law.

DATED: \_\_\_\_\_, 2011  
BRIEFS ON EXCEPTIONS DUE: \_\_\_\_\_, 2011

David Gilbert,  
Administrative Law Judge